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EXAMINER
CRAIG, DWIN M

ART UNIT	PAPER NUMBER
2123	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	10/767,509	FABLES ET AL.
	Examiner	Art Unit	
	Dwin M. Craig	2123	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _28 January 2004_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-20_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-20_ is/are rejected.

7) ☒ Claim(s) _6_ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☒ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on _28 January 2004_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _2/7/2005_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-20 have been presented for examination.

Specification

2.   Applicant is reminded of the proper language and format for an abstract of the disclosure.

        The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

        The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2.1   Applicants' abstract is over 150 words correction is required.

Drawings

3.   The examiner objects to the drawings because they are informal. New drawings will be required which conform to 37 C.F.R. 1.84, the current drawings, have text with lines going through the text and text that is not centered in boxes as well as lines that are either too dark or too light. Correction is requested.

Claims Objections

4.   Claim 6 is objected to because of the following limitation, ...*agent behavioral responses to input data entries representing data occurrences* <u>*likely*</u> *to be encountered in a real-world data source...*" it unclear to the examiner if the data input data entries are encountered, or if the Applicants' claim language only claims that it is *likely* that the data input entries are encountered,

in which case this limitation is describing a possible outcome and not an actual concrete

outcome. In Examiner believes that there is a possible 35 U.S.C. 112 2nd paragraph problem with

claim 6 in that the current claim language is not *concise.*

Amendment and/or clarification are required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or
> any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and
> requirements of this title.

5.   Claims 14 and 16-18 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter.

The method claims are not statutory as any computer-implemented method must produce a result

which is concrete, tangible and useful. As set forth in MPEP 2106(IV)(B):

"In practical terms, claims define nonstatutory processes if they:

-consist solely of mathematical operations without some claimed practical application (i.e.,

executing a "mathematical algorithm"); or

-simply manipulate abstract ideas, e.g. a bid (Schrader; 22 F.3d at 293-94, 30 USPQ2d at 1458-

59) or a bubble hierarchy (Warmerdam, 33 F.3d at 1360, 31 USPQ2d at 1759), without some

claimed application."

Claim 14 is directed towards a computerized method to manipulate behavioral models of

agents which is merely manipulating data structures using a computing device, the claims as set

forth do not disclose that this process produces a concrete, tangible useful result.

As set forth in MPEP § 2106 (IV)(B)(2)(b)(i)

"Examples of claimed processes that do not achieve a practical application include:

- step of "updating alarm limits" found to constitute changing the number value of a variable to represent the result of the calculation (Parker v. Flook, 437 U.S. 584, 585, 198 USPQ 193, 195 (1978));

- final step of "equating" the process outputs to the values of the last set of process inputs found to constitute storing the result of calculations (In re Gelnovatch, 595 F.2d 32, 41 n.7, 201 USPQ 136, 145 n.7 (CCPA 1979); and

- step of "transmitting electrical signals representing" the result of calculations (In re De Castelet, 562 F.2d 1236, 1244, 195 USPQ 439, 446 (CCPA 1977) ("That the computer is instructed to transmit electrical signals, representing the results of its calculations, does not constitute the type of post solution activity' found in Flook, [437 U.S. 584, 198 USPQ 193 (1978)], and does not transform the claim into one for a process merely using an algorithm. The final transmitting step constitutes nothing more than reading out the result of the calculations.")); and

-step of displaying a calculation as a gray code scale (In re Abele, 684 F.2d 902, 908, 214 USPQ 682, 687 (CCPA 1982))."

Comparing the above examples to claims 14 and 16-18, the claimed method merely performs a *selection* and fails to *display* the value as a result of the *modeling*. Claims 14 and 16-18 fail to teach or disclose even the storing in a memory or the display of the *behavioral expression*. It is noted that a claim may be statutory when it identifies the physical structure of manufacture in terms of its hardware, or a hardware software combination. Claims 14 and 16-18 do not recite any physical or hardware limitations, as set forth above. It is also noted that a claim

directed to a product that has a practical application in the arts may be statutory; e.g. a computer

comprising a program that produces a concrete, tangible and useful result, as decided in Alappat

(31 USPQ2d 1557) and State Street (47 USPQ2d 1601). As set forth above, the claimed method

does not produce a concrete, tangible and useful result, therefore the method comprising a

plurality of agent models, that are processed based on real-world data, fails to describe a product

and apparatus or form such using a method that would have a practical application in the arts and

are thus not statutory.

Therefore, claims 14 and 16-18 are considered to be non-statutory subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

6.   Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

6.1   As regards independent claims 1, 14 and 19 and using independent claim 1 as an

example, the claimed limitations, *primitive behavioral states* and *more complex behavioral states*

are not defined such that one of ordinary skill in the art would understand the metes and bounds

of the claimed limitations. The current claim language is unclear and the specification fails to

disclose the distinction between a *primitive behavioral state* versus a *more complex behavioral*

state, and thus the current claimed limitations are not merely broad but undefined and

ambiguous. Further, the current claimed terms, *primitive behavioral state* and *complex*

behavioral state are not defined in the Applicants' specification such that an artisan of ordinary

skill could clearly discern what the scope and meaning of these expressly disclosed limitations.

Section 2173.05(b) of the MPEP states, "When a term of degree is presented in a claim, first a

determination is to be made as to whether the specification provides some standard for

measuring that degree. If it does not, a determination is made as to whether one of ordinary skill

in the art, in view of the prior art and the status of the art, would be nevertheless reasonably

appraised of the scope of the invention. Even if the specification uses the same term of degree as

in the claim, a rejection may be proper if the scope of the term is not understood when read in

light of the specification. While, as a general proposition, broadening modifiers are standard

tools in claim drafting in order to avoid reliance on the doctrine of equivalents in infringement

actions, when the scope of the claim is unclear a rejection under 35 U.S.C. 112, second

paragraph, is proper. See In re Wiggins, 488 F. 2d 538, 541, 179 USPQ 421, 423 (CCPA 1973)."

6.2   Dependent claims 2-13, 15-18 and 20 have inherited this defect amendment and/or

clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on
sale in this country, more than one year prior to the date of application for patent in the United States.

7.   Claims 1-3, 5-16, and 18-20 are rejected under 35 USC 102(b) as being anticipated by

US Patent 6,185,534 Breese.

7.1   As regards independent claims 1, 14 and 19 and using independent claim 1 as an

example, *Breese* discloses, *a computer simulation method for modeling the response of one or*

more agents to real-world input data, comprising:

(Figures 1-13E and the descriptive text and Col. 1 lines 13-16 and Col. 1 lines 39-61 and Col. 6

lines 28-67 and Col. 7 lines 1-64 and Col. 7 lines 65-67 and Col. 8 lines 1-23),

> *(a) modeling an agent's behavioral expression in terms of a series of "scales" for*

behavioral expression

> (Figure 15 and the descriptive text disclosed in *Breese* specifically Col. 16 lines 52-59),

> *within a given cultural environment in response to real-world input data,*

> (Col. 8 lines 55-61 "...so alternative sources of information must be used..." the

alternative information is the real-world information and Col. 12 lines 36-67 more specifically,

"...receives inputs from the user interface representing observations of the user behavior" which

is the same as real-world input and Col. 10 lines 39-53 specifically, "...general cultural

expression..." as regards cultural environment),

> *wherein the scales of behavioral expression progress in logical definition from more*

primitive behavioral states to more complex behavioral states within the given cultural

environment,

> (Col. 17-23),

> *and wherein the agent's behavioral expression includes at least one expected agent*

behavioral response on one scale that is linked as an expected agent behavioral response on one

other scale, whereby at least one example of a progression in agent behavioral responses across

the scales can be monitored in the agent's behavioral expression; (b) running a computer

simulation in which one or more agents having respectively modeled behavioral expressions are

selected to interact with selected sources of real-world input data;

(Figure 1 and the descriptive text and Figure(s) 5A, 5B, 6 and all descriptive text...)

(c) monitoring the interaction of the expected agent behavioral responses of the agent(s)

in the computer simulation with the selected sources of real-world input data; and (d) displaying

a simulation output in a visual form depicting the interaction of the expected agent behavioral

responses of the agent(s) in the computer simulation with the selected sources of real-world

input data,

(Col. 12 lines 36-67 and Col. 13 lines 1-3 and Col. 13 lines 19-39 and Figure 1 reference

146 and Figure 6 reference 660).

In general see also, (Figures 1-17 and Col. 1-22 and Col. 23 lines 1-22).

7.2   As regards dependent claim 2, *Breese* discloses, *wherein the "scales" for behavioral*

expression include one or more behavioral types of the group consisting of: cultural

characteristics; social characteristics; behavioral characteristics; emotional states; social

interaction types; human desires; human beliefs; human empathy types; individual personality

types; perception modes; and decision-making processes,

(As regards emotional states, see Figure 7 reference(s) 704 & 702 and Figure 9 and Col.

14 lines 47-67).

7.3   As regards dependent claim 3, *Breese* discloses, *a computer simulation method according*

to claim 1, wherein the "scales" for behavioral expression include one or more behavioral types

of the group consisting of: Scale of agent's consciousness or awareness of information that may

be of interest; Scale of agent's navigation patterns, including the impulse to move in a particular

direction, emotional patterns of the agent, or modes of categorizing and assigning labels to

information items; Scale of agent's actions and reactions (including emotions) or intuition on a

sense level to information; Scale of "information mulling" modes by which the agent retains a

reservoir of information minutia and creates associations between information items; Scale of

agent's employment of personal information filters and contextual memory for extracting

meaning based on the agent's experience, and the roles they play; Scale of agent's employment of

culturally-based filters, environmental assumptions and conditions, and/or social influences to

extract meaning from information items; Scale of agent's learned modes of extracting meaning

from externally presented information through media channels, news of events, images and

portraits, current priorities, and other external phenomena, that may cause them to put medium

or long term processes into effect or influence a particular response as typical; Scale of agent's

learned or enduring knowledge of the environment he/she is involved in, its history, and its

trends into the future; Scale of agent's complex of deeply held beliefs (including religion) and

cultural or archetypal values; and Scale of agent's world view or overriding ethos through which

all things, from the cosmos down to abstract minutia, are perceived,

(As regards emotional states, see Figure 7 reference(s) 704 & 702 and Figure 9 and Col.

14 lines 47-67).

7.4   As regards dependent claims 5 and 18 and using dependent claim 5 as an example,

Breese discloses, *wherein the agent(s) selected to be run in the computer simulation include one*

or more agent types from the group consisting of: members of an organization; positions within

an organization; a leader or "node" within an organization; a follower within an organization; a

competitor to an organization; an enduring influence in the given cultural environment; domain

knowledge in the given cultural environment; terrain knowledge in the given cultural

environment; and a society, organization or institution.

(Figure 16G teaches different classes in a society, specifically terrain knowledge in the

given cultural environment, more specifically a society, i.e. High Society, White Collar, Blue

Collar as regards the limitation of "nodes" see Col. 17-22 and Col. 23 lines 1-6 and Col. 5 lines

16-30).

7.5   As regards dependent claim 6, *Breese* discloses, *wherein the agent's behavioral*

expression is defined in terms of expected agent behavioral responses to input data entries

representing data occurrences likely to be encountered in a real-world data source, and the real-

world data input is a source of input data entries containing such data occurrences.

(See Col. 5 lines 30-42 and Col. 8 lines 55-61 and Col. 9 lines 15-29).

7.6   As regards dependent claim 7, *Breese* discloses, *wherein within each scale a plurality of*

refined "levels" of agent behavioral responses within that scale are defined.

(See Figure(s) 16A-G and the descriptive text).

7.7   As regards dependent claim 8, *Breese* discloses, *wherein within each level a plurality of*

refined "degrees" of agent behavioral responses within that level are defined.

(See Figure(s) 16A-G and the descriptive text).

7.8   As regards dependent claim 9, *Breese* discloses, *wherein the agent's behavioral*

expression is defined in terms of keywords that the agent responds to in real-world text data, and

the computer simulation proceeds by filtering the input real-world text data for keywords

matching those of a word list associated with the modeling of the agent(s) selected for the

simulation, and the matched keywords are processed through the agent's behavioral expression

by linking keyword matches found at each scale to other keyword matches found at each other

linked scale until the linking of input-response matches reaches a terminating stage.

(See Figure 17 and See Col. 5 lines 30-42 and Col. 8 lines 55-61 and Col. 9 lines 15-29).

7.9   As regards dependent claim 10, *Breese* discloses, *wherein the processing of keyword*

matches through the agent's behavioral expression is monitored and displayed in a visual form

in a waveform chart displaying the frequency of keyword matches of the input text in terms of

scale/level/degree.

(See Figure(s) 16A-G and the descriptive text and Figure 15).

7.10   As regards dependent claim 11, *Breese* discloses, the functional equivalent of a star chart

(Figure 10).

7.11   As regards dependent claim 12, *Breese* discloses, the functional equivalent of a grid chart

(Figure 15).

7.12   As regards dependent claim 13, *Breese* discloses, *wherein the processing of keyword*

matches through the agent's behavioral expression is monitored and displayed in a visual form

in a pole chart displaying markers for keyword "hits" of an agent expression in response to an

input text in terms of scales as poles, level as vertical position on the poles, and degree as

horizontal position of a marker at a given level on a given pole.

(See Figure 15 and the descriptive text).

7.13   As regards dependent claim 15, *Breese* discloses, *further comprising programming a*

display of simulation output in a visual form depicting the interaction of the expected agent

behavioral responses of the agent(s) in the computer simulation with the selected sources of real-

world input data.

(See Figure 1 reference 146, and Figures 5A & 5B and Figure 6 and Col. 6 lines 28-67

and Col. 7 lines 1-64 and Col. 12 lines 36-67 and Col. 13 lines 1-3).

7.14   As regards dependent claim 16, *Breese* discloses, *wherein the "scales" for behavioral*

expression include one or more behavioral types of the group consisting of: cultural

characteristics; social characteristics; behavioral characteristics; emotional states; social

interaction types; human desires; human beliefs; human empathy types; individual personality

types; perception modes; and decision-making processes.

(See Figure(s) 16A-G and the descriptive text and Figure 15).

7.15   As regards dependent claim 20 *Breese* discloses, *wherein the visual display is one or*

more display types from the group consisting of: (i) a waveform chart displaying the frequency

of keyword matches of the input text in terms of scale/level/degree; (ii) a star chart displaying

patterns of scale progression for an agent expression in response to an input text; (iii) a grid

chart displaying the patterns of scale progression for an agent expression in response to an input

text; (iv) a pole chart displaying markers for keyword "hits" of an agent expression in response

to an input text in terms of scales as poles, level as vertical position on the poles, and degree as

horizontal position of a marker at a given level on a given pole; and (v) a waveform chart

displaying the frequency of keyword matches of the real-world input data in terms of time.

(See Figures 10 and 15 and the descriptive text).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8.   Claims 4 and 17 are rejected under 35 USC 103(a) as being unpatentable over US Patent 6,185,534 Breese in view of "When the SIMS™ GET REAL: AN ANALYSIS OF HOW DIGITAL PLAY SPACES PROMOTE LEARNING IN LOW-INCOME, DIVERSE COMMUNITIES" by Kallen E. Tsikalas, hereafter referred to as *Tsikalas*.

8.1   As regards dependent claims 4 and 17 and using dependent claim 4 as an example, *Reese* does not expressly disclose, *real-world data input includes one or more sources from the group consisting of news sources; broadcast media; communications and interactions between*

participants; publicly available information; information sources available to selected agents;

information sources available to selected organizations; analyst reports; reviews; search data;

general literature; movies; images; sound; and other human perceptual data.

Tsikalas expressly teaches *real-world data input includes one or more sources from the*

group consisting of news sources; broadcast media; communications and interactions between

participants; publicly available information; information sources available to selected agents;

information sources available to selected organizations; analyst reports; reviews; search data;

general literature; movies; images; sound; and other human perceptual data,

(page 7)

Breese and *Tsikalas* are analogous art because they are from the similar problem solving

area of modeling agent behavior based on real-world input.

At the time of the invention, it would have been obvious to a person of ordinary skill in

the art to have included the effects of broadcast media as disclosed in *Tsikalas* into the modeling

of agent behavior as disclosed in *Breese*.

The motivation for doing so would have been to make the agents emotional reactions

modeled closer to the way a real person would behave by including the influence of the new

media and thus provide a simulation with greater fidelity. *This motivation is know to the*

examiner as the simulation technological arts are always trying to improve simulations to

provide a simulation model that more closely resembles reality, Further the examiner notes that

the methods disclosed in *Tsikalas* have been found to be useful for helping low-income, pre-

adolescents to improve learning and cultural understanding *see Abstract and Conclusion of*

Tsikalas.

Therefore, it would have been obvious to combine *Tsikalas* with *Breese* to obtain the invention as specified in claims 4 and 17.
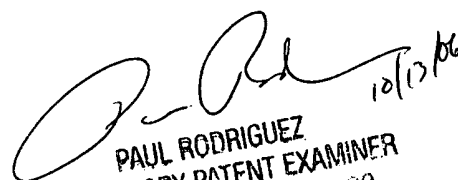
Conclusion

9.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M. Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul L. Rodriguez can be reached on (571) 272-3753. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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